

The Office accepted that on August 14, 2006 appellant, then a 43-year-old customer service supervisor, sustained an aggravation of the right rotator cuff when he tried to catch a falling oversized pallet. He attempted a return to light-duty work on August 21 and September 9,

2006, stopped again on September 9, 2006 and did not return. Appellant received wage-loss compensation beginning on October 14, 2006.

In an August 14, 2006 report, Dr. Michael A. Lee, an attending Board-certified internist, diagnosed a right shoulder strain due to the incident that day. He found tenderness at the right acromioclavicular joint, with limited adduction, extension and elevation.

On August 15, 2006 Dr. Glenn A. Teplitz, an attending Board-certified orthopedic surgeon, noted appellant's history of a massive right rotator cuff tear with debridement and attempted prior surgical repair on January 5, 2006. He stated that he could not distinguish between the effects of the August 14, 2006 injury and the preexisting condition. In an August 23, 2006 report, Dr. Mark G. Grossman, an attending Board-certified orthopedic surgeon, who performed the January 2006 surgery, diagnosed a "[r]ight massive rotator cuff tear status post debridement." He explained that there was "too much atrophy and soft tissue damage" to have performed fixation in January 2006. Appellant's prognosis was "guarded as he has a chronically torn irreparable rotator cuff tear."

Appellant was then followed by Dr. Philip L. Schrank, an attending Board-certified orthopedic surgeon. In reports from September 7 through November 2006, Dr. Schrank opined that the August 14, 2006 injury severely exacerbated the preexisting right shoulder condition, causing limitation of motion and pain. Physical therapy and medication did not improve his symptoms.

On December 1, 2006 Dr. Schrank performed a right shoulder arthroscopy, rotator cuff repair with anchor fixation, Pegasus patch graft, revision of subacromial decompression, distal clavicle excision and arthroscopic lateral debridement.¹ He submitted progress reports through January 2007 finding improved right shoulder mobility. Appellant participated in physical therapy through November 2007.

On May 31, 2007 the Office obtained a second opinion from Dr. Isaac Cohen, a Board-certified orthopedic surgeon, who reviewed the medical record and statement of accepted facts. On examination, Dr. Cohen found significantly restricted right shoulder motion. He diagnosed status post right shoulder arthroscopy. Dr. Cohen opined that appellant's "injury was preexisting and exacerbated by the accepted injury of August 14, 2006. He noted that the underlying right shoulder condition had not resolved. Dr. Cohen found appellant able to work four hours a day with restrictions.

In reports from July 10 to October 3, 2007, Dr. Schrank opined that appellant had reached maximum medical improvement, with permanent weakness and restricted motion in the right shoulder. He found appellant totally disabled for work.

The Office found a conflict of medical opinion between Dr. Schrank, for appellant, and Dr. Cohen, for the government, regarding whether appellant remained totally disabled for work due to the accepted injury. To resolve the conflict, the Office referred appellant, the medical record and a statement of accepted facts to Dr. Bradley L White, a Board-certified orthopedic

¹ The Office authorized the surgical procedure.

surgeon. In a December 3, 2007 report, Dr. White reviewed the medical record and statement of accepted facts. On examination, he found restricted elevation and external rotation and supraspinatus abduction strength at 4/5. Dr. White diagnosed a “[r]esolved temporary exacerbation of preexisting massive rotator cuff tear of right shoulder, previously deemed irreparable, now status post arthroscopic patch graft rotator cuff repair.” He opined that the August 14, 2006 exacerbation had resolved as the tear had been surgically repaired in December 2006. Dr. White found appellant able to perform full-time duty with a limitation against overhead work, pulling, pushing or lifting more than 20 pounds with his right upper extremity. These restrictions were “entirely due to the preexisting disability” and not the August 14, 2006 exacerbation.

By notice dated July 2, 2008, the Office advised appellant that it proposed to terminate his wage-loss and medical compensation benefits, based on Dr. White’s opinion that the accepted right rotator cuff tear had ceased without residuals.

In a July 28, 2008 letter, appellant, through his attorney, asserted that the proposed termination was contrary to the medical evidence of file. Counsel also submitted an August 21, 2008 brief asserting that the Office should have accepted right rotator cuff tears and other conditions, not only an aggravation of the right rotator cuff. He provided an April 1, 2008 report from Dr. Schrank stating that the August 14, 2006 injury exacerbated the preexisting condition, causing limited mobility, pain, weakness and a permanent disability. Dr. Schrank opined that appellant would need further medical treatment and possible arthroplasty.²

By decision dated October 30, 2008, the Office terminated appellant’s wage-loss and medical compensation benefits effective that day on the grounds that the accepted injury had ceased without residuals. It accorded the weight of the medical evidence to Dr. White, finding his report thorough and well rationalized. The Office found that Dr. Schrank did not provide medical rationale distinguishing between the preexisting rotator cuff tear and the August 14, 2006 injury in causing appellant’s ongoing right shoulder condition. Therefore, Dr. Schrank’s April 1, 2008 report was insufficient to create a conflict with Dr. White.

LEGAL PRECEDENT

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴

Section 8123 of the Federal Employees’ Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the

² In a decision dated September 4, 2008, the Office approved an attorney’s fee. Appellant did not appeal this decision.

³ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁴ *Id.*

physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.⁵ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁶

ANALYSIS

The Office accepted that appellant sustained an aggravation of the right rotator cuff on August 14, 2006. He received compensation for total disability beginning in October 2006. Dr. Schrank, an attending Board-certified orthopedic surgeon, performed a right rotator cuff repair on December 1, 2006. He found appellant totally disabled for work. Dr. Cohen, a Board-certified orthopedic surgeon and second opinion physician, opined on May 31, 2007 that appellant could work four hours a day and that the rotator cuff had been repaired successfully. The Office found a conflict of medical opinion between Dr. Schrank and Dr. Cohen.

The Act, at 5 U.S.C. § 8123, states that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. In accordance with 5 U.S.C. § 8123, to resolve the conflict, the Office obtained an impartial medical evaluation from Dr. White, a Board-certified orthopedic surgeon. On December 3, 2007 Dr. White reviewed the medical record and statement of accepted facts and performed a thorough examination. He opined that the torn right rotator cuff had been resolved by the December 2006 patch graft repair. Therefore, there were no residuals of the August 14, 2006 strain. Dr. White opined that appellant could work full-time limited duty. The Office then terminated appellant's wage-loss compensation, based on Dr. White's opinion.

When the Office refers a case to an impartial medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based upon a proper medical and factual background, must be given special weight.⁷ Dr. White's opinion is based on a complete and accurate background as he reviewed the medical record and statement of accepted facts. He also provided detailed clinical findings from his thorough physical examination. Dr. White explained that appellant had no residuals of the accepted right rotator cuff tear. The Board finds that Dr. White's opinion is sufficient to represent the weight of the medical evidence as it is detailed, well rationalized and based on a complete factual and medical history.⁸ In contrast, Dr. Schrank's reports did not contain sufficient rationale supporting a causal relationship between appellant's ongoing right shoulder condition and the accepted August 14, 2006 injury as distinguished from the underlying, preexisting condition. Thus, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

⁵ 5 U.S.C. § 8123; see *Charles S. Hamilton*, 52 ECAB 110 (2000).

⁶ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

⁷ *Id.*

⁸ *Conard Hightower*, 54 ECAB 796 (2003).

On appeal, appellant's attorney contends that the Office's termination of appellant's compensation was contrary to the medical evidence. Counsel asserted that Dr. Schrank's reports established that the accepted aggravation had not ceased. However, as set forth above, Dr. White's report as impartial medical specialist represents the weight of the medical evidence in this case. Therefore, the Office's termination was proper under the law and facts of this case.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective October 30, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 30, 2008 is affirmed.

Issued: November 12, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board